

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

3 Barry Lee Jones, )  
4 )  
5 Petitioner, ) CV 01-00592-TMB  
6 )  
7 vs. )  
8 ) Tucson, Arizona  
9 Charles L. Ryan, et al., ) November 3, 2017  
10 ) 9:08 a.m.  
11 )  
12 Respondents. )  
13 \_\_\_\_\_

14 TRANSCRIPT OF PROCEEDINGS  
15 EVIDENTIARY HEARING - DAY FIVE  
16

17 BEFORE THE HONORABLE TIMOTHY M. BURGESS  
18 UNITED STATES DISTRICT JUDGE  
19 405 W. CONGRESS STREET  
20 TUCSON, ARIZONA 85701  
21

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UNITED STATES DISTRICT COURT

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I N D E XWITNESSPAGESTUART H. JAMES

Direct examination by Ms. Smith	5
Examination by the Court	25
Direct examination (cont'd) by Ms. Smith	27
Cross-examination by Mr. Braccio	36
Examination by the Court	38

JAMES WILLIAM HAZEL, JR.

Direct examination by Mr. Sandman	41
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E X H I B I T SIDENTIFIEDOFFEREDADMITTED

121A	11	11
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## P R O C E E D I N G S

(Call to order of court, 9:08 a.m.)

THE COURT: All right. So who do we have next?

MS. SMITH: We call Stuart James.

THE COURT: All right. Mr. James, if you could please come forward and have -- well, don't have a seat yet. Stand in that box. That will be great. Madam clerk will swear you in. She'll swear you in. Go ahead and stand right there.

THE WITNESS: Yes, Your Honor.

THE COURT: You can actually come in the box.

THE WITNESS: Okay.

STUART H. JAMES, WITNESS, WAS SWORN.

THE COURT: Have a seat, sir.

THE WITNESS: Thank you.

MS. SMITH: Make sure you have the right chair.

THE WITNESS: Is that the right chair?

THE COURT: That's the right one.

THE WITNESS: There's a good chair and a bad chair. I heard there's a good chair and a bad chair, so -- okay, I'm good.

THE COURT: Well, I'm not even going there.

I'm sorry. I don't know what -- I moved this over to the side so I could actually see the witness and now I killed it. It's blank.

## 1 DIRECT EXAMINATION

2 BY MS. SMITH:

3 Q. Could you please state your name for the record?

4 A. Yes, my name is Stuart spelled S-t-u-a-r-t, middle initial  
5 H, and last name James, J-a-m-e-s.

6 Q. Great. Good morning, Mr. James. Thank you for coming.

7 Could you tell us how you're currently employed?

8 A. I am currently employed as a forensic scientist with  
9 emphasis on bloodstain pattern analysis. I have my own company  
10 which is entitled James and Associates Forensic Consultants,  
11 Incorporated, located in Ft. Lauderdale.

12 Q. Great. And what does your current practice consist of?

13 A. It consists of case work both for prosecution and defense  
14 attorneys in criminal cases, occasional civil case, cases now  
15 and then, and an emphasis on teaching -- teaching both basic  
16 and advanced courses in bloodstain pattern analysis.

17 Q. Could you tell us about your educational background?

18 A. Yes, I received a B.A. degree in biology and chemistry from  
19 Hobart College in upstate New York back in 1962. In 1963 I  
20 completed a one year internship in medical technology here  
21 locally at St. Mary's Hospital and that was 1963. I became  
22 licensed as a medical technologist, which I practiced for a few  
23 years, and then between 1977-1979 I completed nine hours of  
24 graduate study, including my first bloodstain pattern analysis  
25 course, homicide investigation, and the third course was

1 forensic microscopy, which is the study of trace evidence using  
2 magnification. That's my formal education.

3 Q. Thank you. And are you a member of any professional  
4 organizations?

5 A. Yes, I am.

6 Q. Could you tell us what those are?

7 A. Sorry?

8 Q. Which ones?

9 A. Oh, sorry. I'm a fellow member of the American Academy of  
10 Forensic Scientists. I've been affiliated with that  
11 organization since 1971. I'm also a charter member of the  
12 International Association of Bloodstain Pattern Analysts, which  
13 was formed in 1983. In that organization, I was a charter  
14 member, I'm a distinguished member, and also for 12 years  
15 ending last year I was the editor of their publication.

16 Q. And could you just say one more time when that organization  
17 was founded?

18 A. 1983.

19 Q. So by the early '90s, were there a lot of bloodstain  
20 pattern analysts in the field?

21 A. There was an increasing number ever since 1971 when Herbert  
22 MacDonell taught the first course in Jackson, Mississippi, and  
23 he was my instructor as well. And since '71 through the '80s  
24 and '90s, and even through today there are many people who have  
25 been trained, have worked many cases and do teaching in basic

1 and advanced courses.

2 Q. Could we pull up 120? And could you just identify what  
3 we're looking at here, Mr. James?

4 A. Yes, that is the first page of my curriculum vitae.

5 Q. And in there you list courses you've taught and some  
6 publications, and your career history?

7 A. Yes.

8 Q. Could you just give us a brief overview of your  
9 professional experience? We won't go page by page.

10 A. Well, in terms of my work experience?

11 Q. Yes.

12 A. Okay. Well, as I said before, I was a medical technologist  
13 for several years. In nineteen -- let's see, it would have  
14 been 1971, I then became a forensic toxicologist at Wilson  
15 Hospital in Johnson City, New York, that's upstate. And in  
16 nineteen -- let's see, 1977 I then set up a crime laboratory  
17 and became a supervisor of that crime laboratory in Binghamton,  
18 New York. That laboratory was open for four years and then it  
19 was taken over by the New York state police and I became a  
20 private consultant after that time.

21 Q. And you've been doing bloodstain interpretation evidence  
22 since that time?

23 A. Yes. I was a private consultant in upstate New York until  
24 1988. I then moved to Florida and eventually incorporated in  
25 1994.

1 Q. And do you have some experience investigating crime scenes?

2 A. Yes.

3 Q. And in what capacity have you done that?

4 A. Well, initially I was assisting a Dr. William Eckert  
5 forensic pathologist in Wichita, Kansas, both with autopsy  
6 assistance as well as crime scene investigation, and then in  
7 New York state, I was the supervisor of the crime laboratory.

8 We served -- we did crime scene work for approximately

9 13 counties in New York state, in more or less the southern

10 tier of the state. And currently for the past 12 years I've

11 been doing the crime scene work for the Palm Beach County

12 Sheriff's Office, as well as Collier County Sheriff's Office,

13 which is essentially Naples and Ft. Myers, Florida, and I've

14 done a couple of cases up in Port St. Lucie -- this is mostly

15 Florida -- and, let's see, also Orlando. And I've done an

16 occasional prosecution case out of state such as about four or

17 five years ago in Tennessee. My work is about 25 percent

18 prosecution and about 75 percent for the defense.

19 Q. Great. Thank you. And you've appeared as an expert before  
20 in court?

21 A. Yes, I have.

22 Q. And you've been qualified by courts as a bloodstain pattern  
23 analyst expert?

24 A. Yes, and as a crime scene reconstructionist as well.

25 Q. Okay. And back in 1994 and 1995, were you consulting with



1 both prosecutors and defense attorneys about bloodstain pattern  
2 interpretation?

3 A. What was that question again? Sorry.

4 Q. Sorry. Back in 1994, and 1995, were you consulting about  
5 bloodstain interpretation with prosecutors or defense  
6 attorneys?

7 A. Oh, yes, of course, I was.

8 Q. And were there others in the field that were doing that  
9 work at the time, too?

10 A. Yes, many others whom I know through my association with  
11 the international association of bloodstain pattern analysts.

12 Q. Have you published articles, books, or scientific papers on  
13 this topic?

14 A. Yes, I have.

15 Q. And those are included in your CV?

16 A. Yes, they are in my CV. The most current one was published  
17 in 1995, I believe, or 2005, I'm sorry, Principles of  
18 Bloodstain Pattern Analysis, Theory and Practice. It was  
19 co-authored by myself, Paul Kish, and Paulette Sutton.

20 Q. And do you also teach courses on bloodstain pattern  
21 interpretation?

22 A. Yes, I've taught basic and advanced courses within the  
23 state of Florida, New York state, let's see, California,  
24 Michigan, and several other states, just to name a few. I've  
25 also taught basic and advanced courses in England, the

1 Netherlands, and also Canada and Aruba in the Dutch Antilles,  
2 and also in Australia.

3 Q. Thank you. Could you give us a brief overview of some of  
4 the general principles and processes that guide bloodstain  
5 pattern analysis? And I think in assisting you in your answer  
6 you've provided us with a demonstrative exhibit which we could  
7 pull up at this time, please.

8 MS. SMITH: Do you have access to this now, Your  
9 Honor?

10 THE COURT: I do. We're back in business. Thank you.

11 BY MS. SMITH:

12 Q. So my question was, if you could just give us an overview  
13 of some of the principles that guide bloodstain pattern  
14 analysis.

15 A. Yes, this is a -- an example of the scientific method which  
16 is more attributable to bloodstain pattern analysis where  
17 starting you have a blood shed event that creates bloodstains  
18 and then the physical characteristics, size, shape, and  
19 distribution of the stains must be studied and documented.  
20 Then utilizing one's knowledge of BPA, which is an acronym for  
21 bloodstain pattern analysis, and experience and training, you  
22 evaluate the case facts and by evaluating case facts in  
23 addition to the bloodstain analysis, you must evaluate the  
24 pathology, the forensic pathology, the types of injuries  
25 incurred by a victim as well as, you know, blood typing

1 including DNA which actually began around 1985. Before that it  
2 was A, B, O grouping and enzyme markings, et cetera. And then  
3 with this information you assess all the possible mechanisms  
4 that could be attributed to creating certain patterns of blood  
5 and you reconstruct these and draw conclusions.

6 THE COURT: I'm sorry. He's been referring to a  
7 particular exhibit. For the record, you want to identify that?

8 MS. SMITH: Sure. These were a series of diagrams  
9 that were provided to us by Mr. James.

10 THE COURT: Right.

11 MS. SMITH: We provided them to the attorney general  
12 and they've been marked as Exhibit 121A. I don't know, do you  
13 have an objection to offering them into evidence?

14 MR. BRACCIO: No objection.

15 MS. SMITH: So we'll move to have them admitted as  
16 Exhibit 121A.

17 THE COURT: Thank you. They'll be admitted.

18 BY MS. SMITH:

19 Q. Can we take a look at the next page, please? Mr. James,  
20 you've told us that there are some general categories that are  
21 used when describing bloodstain?

22 A. Yes. This was created by myself and Paul Kish as part of  
23 the production of our book that I mentioned in terms of  
24 bloodstain pattern analysis, and what it is is it's a  
25 classification system and there are other classifications but

1 this is the one that we feel is most significant, and starting  
2 off with the bloodstain and usually the size, shape, and  
3 distribution of the bloodstains we can categorize them into  
4 these different categories, like, for example, passive stains  
5 are those that require very little energy to produce such as  
6 dripping blood, pool blood on a surface, flow patterns,  
7 transfer stains.

8 And then we have another category which is -- we call  
9 spatter. And that's a general term at the top of the tree here  
10 so to speak, and the size and shape come into play here. The  
11 spatter stains are much smaller in diameter because it's taken  
12 more energy to create them and it breaks the blood source up  
13 into smaller -- small droplets compared to passive stains and  
14 we have impact spatter, we have secondary spatter, which is  
15 actually from blood dripping and the blood creating  
16 ricochetting or satellite spatters around it and then we have  
17 projected spatter.

18 And of course the altered stains all these various things  
19 can happen to blood which attribute themselves to passive or  
20 scatter stains that is clotted, diluted, dried bloodstains,  
21 diffuse, insects stains, and so forth. So these are activities  
22 that can affect the appearance of stains in the other two  
23 categories.

24 THE COURT: Can I ask you a question?

25 THE WITNESS: Yes, sir.

1           THE COURT: So for the first two categories, passive  
2 and spatter, is the same -- do the same principles apply to any  
3 liquid or are they specific to blood because of its make-up? I  
4 mean, I know the third category, altered, obviously would apply  
5 really only to blood.

6           THE WITNESS: Yes.

7           THE COURT: But when you look at, for instance,  
8 spatter, that could apply to almost any liquid. Are there  
9 specific characteristics that make it specific to blood in your  
10 analysis?

11          THE WITNESS: Well, we have the size, shape, and  
12 distribution, but also blood is a fluid and follows the  
13 principles of fluid dynamics.

14          THE COURT: Right.

15          THE WITNESS: So the raindrops and inkdrops and other  
16 types of liquids will follow generally the same principles,  
17 okay? In teaching our courses, some instructors use red ink,  
18 others use animal blood. We use -- we try to use human blood  
19 if possible, but all these liquids react pretty much the same  
20 in terms of creating patterns.

21          THE COURT: Right.

22          THE WITNESS: But after that, there are obviously  
23 physiological differences.

24          THE COURT: Right. Correct. Thank you.  
25

1 BY MS. SMITH:

2 Q. And then the next slide I think you focus on different  
3 types of passive stains?

4 A. Yes, this is a further breakdown of the passive area of our  
5 flow chart. Transfer stains are listed here. You have a swipe  
6 which is simply the -- an object wet with blood is -- comes in  
7 contact with a nonbloody surface and with a lateral motion  
8 swipes. We have another category which is not on here called a  
9 wipe. And if there's blood on a surface and you draw something  
10 through it, it's called a wipe. We have flow patterns, we have  
11 drops of blood falling on surfaces, they can be a single drop,  
12 they can be multiple drops in one area, or if there's a path of  
13 blood drops we call it a drip trail so they're all pretty much  
14 the same size stains.

15 Then with large volume stains we have saturation and  
16 pooling of blood which are the most common. The only  
17 difference between saturation and pooling is the fact that  
18 pooled blood falls -- forms on any -- a hard surface and  
19 doesn't get absorbed whereas if that same amount of blood is  
20 deposited on a mattress, for example, it absorbs in we call it  
21 saturation. It's just a matter of making a distinction between  
22 the two surfaces.

23 Q. And if we took a look at the next slide, we have a further  
24 breakdown of the spatter categories?

25 A. Yes. Here we have what I mentioned before briefly, the

1 secondary mechanisms, satellite spatter. It's actually a  
2 by-product of a passive dripping of blood but you get small  
3 spots of blood that are created as blood falls into one drop  
4 into the other, it creates the pattern of small spots. We call  
5 it satellite spatter.

6 More importantly, impact mechanisms, we recognize these  
7 types of mechanisms, gunshot, beating and stabbings, and power  
8 tools. And there's other mechanisms in some like car  
9 accidents, you may see impact spatters and things of that sort  
10 but in our general work these are the common ones that I run  
11 into.

12 And then we have projection mechanisms. We break those  
13 down into cast-off, which is having blood on an object or your  
14 hand, and it's swung, the centrifugal force will cause the  
15 blood droplets to fly off onto a nearby surface. That's why we  
16 call it cast-off.

17 Arterial, those are patterns created when there's a  
18 breached artery, that is to say, for example, a cut in a  
19 carotid artery will cause a spray of blood and it's very  
20 characteristic in size and shape and this is due to the  
21 pressure of the blood coming out of the artery.

22 And then finally, expired blood by its name is blood that  
23 is being forced out of the airway due to injury to the nose or  
24 mouth, an oral cavity, or even the lungs, and those stains can  
25 be very small as well.

1        So when evaluating these bloodstains, you have to be aware  
2 of all the case facts that are present because, for example,  
3 impact mechanisms can overlap in size and shape with expired  
4 and cast-off, for example. So that's why you need to be able  
5 to recognize this. For example, expired blood, you can rule  
6 it out if there's no blood around the nose and mouth or in the  
7 chest injury. So that's one way to, you know, substantiate  
8 your final conclusion.

9        Q. Thank you. Let's talk about your involvement in this  
10 particular case, the Barry Jones case. Do you recall when you  
11 were first contacted about this case?

12        A. Yes, I believe it was back in -- hang on a second here.

13        Q. If you know the general year, that's probably good enough  
14 for us.

15        A. It was approximately back in 2002. Sorry.

16        Q. And do you recall what you were asked to do at that time?

17        A. I was asked to do a bloodstain pattern analysis of this  
18 case based upon relevant materials that were sent to me as a  
19 result.

20        Q. Did you write a report back in 2002?

21        A. Sorry?

22        Q. Did you write a report at that time?

23        A. An affidavit, yes.

24        Q. An affidavit. And you actually drafted that affidavit  
25 yourself?



1 A. Yes, I did this one.

2 Q. Can we take a look at Exhibit 121? And is this your  
3 affidavit, Mr. James?

4 A. Yes, yes, it is.

5 Q. And could we take a look at page 3 and if -- is it possible  
6 to see the top of page 4, too? Perfect. And in this affidavit  
7 you list some materials that you reviewed related to Mr. Jones'  
8 case?

9 A. Yes, those are materials that I received that is A through  
10 L and then M was an actual evidence examination done here in  
11 Tucson on 11/18 of '02.

12 Q. And when you came to Tucson to review physical evidence, do  
13 you recall what evidence you looked at?

14 A. I remember it was, I believe, clothing of Mr. Barry Jones  
15 and I believe some of the carpet sections basically.

16 Q. Let's take a look at Exhibit 65A at page 83. Mr. James,  
17 are these some of the carpet stains that you've previously  
18 reviewed either in person or in photographs?

19 A. Yes, that's true, correct.

20 Q. And the top picture here is what the police identified as  
21 V-6. Could you describe what we're seeing here?

22 A. Well, on this brown carpet, you're seeing an area of  
23 saturation stain with some smaller spots of blood, apparent  
24 blood, around it. And that would allow me to draw a conclusion  
25 it's most likely a drip pattern from blood falling into blood

1 and creating saturation and that is with the satellite spatters  
2 around it.

3 Q. And is that conclusion based upon the shape of the stain or  
4 the volume of blood that you see here?

5 A. Yes, the volume's difficult to determine but as far as the  
6 area that's saturated, it's very small and you can see the  
7 small stains around it that would -- it would fit the criteria  
8 for a drip pattern.

9 Q. And is that true of the stain that we're looking at in V-7  
10 also?

11 A. V-7 is extremely small but it does appear to be a small  
12 saturation stain.

13 Q. And does it also appear to be a drip pattern?

14 A. Well, the stain, that irregularly shaped stain that is at  
15 the edge of the paper, it's irregular because it's a drip stain  
16 that fell on to a textured surface and you don't see a circular  
17 stain you rather see one that's got spines and irregularities  
18 around the periphery.

19 Q. Thank you, Mr. James.

20 THE COURT: I'm sorry. You may have asked this  
21 question and I've just forgotten but did you identify the  
22 exhibit number this is?

23 MS. SMITH: Of the exhibit?

24 THE COURT: Right.

25 MS. SMITH: This is Exhibit 65A.

1 THE COURT: Thank you.

2 MS. SMITH: At page 83.

3 THE COURT: Thank you.

4 BY MS. SMITH:

5 Q. Let's go back to your original affidavit, Mr. James, which  
6 is Exhibit 120. And if we could take a look at page 4.

7 THE COURT: And 120's been admitted?

8 MS. SMITH: Yes, Your Honor.

9 THE COURT: Thank you.

10 BY MS. SMITH:

11 Q. I'm sorry. I must have the wrong page. I apologize, I  
12 meant Exhibit 121.

13 THE COURT: Same page number?

14 MS. SMITH: Same page number.

15 BY MS. SMITH:

16 Q. There we go. And if we could enlarge paragraph 3 which  
17 continues on to the very top of page 5. And here in your  
18 report you drew some conclusions about those two stains that we  
19 just looked at, which was the carpet samples V-6 and V-7. Your  
20 review indicated that those stains indicated the presence of  
21 blood consistent with Rachel Gray and you concluded that this  
22 indicated that Rachel Gray was actively bleeding and moving  
23 around while in the van and may have made contact with the  
24 carpet with a bloody area at some point in time.

25 Is that true?

1 A. Yes.

2 Q. And you make a further comment about passive dripping of  
3 blood on a surface such as carpet could create very small  
4 stains due to the rapid absorption of blood into carpet fibers  
5 and should not be confused with blood spatter. I believe  
6 you've already commented to us about how blood saturates into  
7 carpet fibers; is that correct?

8 A. That's correct, yes.

9 Q. And these findings are based on your training and  
10 experience?

11 A. Sorry?

12 Q. Are those findings based upon your training and experience?

13 A. Oh, I'm sorry. Yes, my training and experience in  
14 bloodstain pattern interpretation and laboratory reports.

15 Q. Thank you.

16 Could we go on to the next paragraph, please, paragraph 4  
17 on page 5 of Exhibit 121? Mr. James, did you also review some  
18 bloodstains on the passenger's seat of the van?

19 A. That's correct.

20 Q. And did you have an opinion about what might have caused  
21 these bloodstains?

22 A. Yes. Based on the evidence and the case facts that I was  
23 able to study, I concluded that most likely the bloodstains on  
24 the front passenger's seat of the van have the appearance of a  
25 projected bloodstain pattern. And the subcategory of that

1 would be sort of like a cast-off and the mechanism would be  
2 based on, you know, the case facts from bloody hair possibly,  
3 you know, swinging and causing blood to project from it onto  
4 that surface.

5 Q. And let's take a look at a picture of those bloodstains,  
6 which is back in Exhibit 65A at page 120. These are not the  
7 greatest photographs. But do these identify what you reviewed,  
8 which was identified at trial as V-12, the spatter on the  
9 passenger's seat?

10 A. Yes, they're not as visible here as they were in other  
11 photos, in another setting, but, yes, it's the areas --

12 Q. Could we actually look at the next page? I think it's a  
13 little easier to see. Is that a little bit better?

14 A. Yeah, that's a little better, yes.

15 THE COURT: I'm sorry. Would that be -- are you  
16 saying is that -- I'm a little confused. I thought you said it  
17 was projected.

18 THE WITNESS: Yes.

19 THE COURT: And from the original chart or one of the  
20 earlier charts you were talking about swiping and wiping. So  
21 this is not a swipe or a wipe?

22 THE WITNESS: No.

23 THE COURT: What's the difference?

24 THE WITNESS: The stains that were produced here were  
25 airborne. In other words, a swipe and a wipe have to have

1 direct contact.

2 THE COURT: Direct contact?

3 THE WITNESS: Direct contact with the surface,  
4 correct.

5 BY MS. SMITH:

6 Q. And I believe you described them as potentially cast-off?

7 A. Yes, a type of cast-off. Every cast-off is not a swinging  
8 of an object, it can be bloody hair that is flipped. We've seen  
9 that -- I've seen that several times in my casework.

10 Q. Could we take a look at page 114 of this exhibit?

11 Mr. James, did you also take a look at this photograph of a bag  
12 here in photo 950?

13 A. Yes, that's a photograph of the Circle K bag, a white  
14 plastic bag which has on it multiple transfer stains where  
15 contact has been made from a bloody source onto that plastic  
16 material.

17 Q. And if we could go back to your report, which again is  
18 Exhibit 121 at page 5. Mr. James, your conclusions about the  
19 bloodstains that you found in the van, are they consistent with  
20 Rachel being carried or moved within the van while she was  
21 bleeding from an open wound?

22 A. Yes, I believe I put in my affidavit that the movement of  
23 her was the blood source in different areas of the van, yes.

24 Q. Did you do some further work on this case in 2012?

25 A. Yes.

1 Q. And did that include meeting with an investigator from our  
2 office?

3 A. With what again? I'm sorry. That microphone is a little  
4 muffled for some reason.

5 Q. I'm sorry. Did that include meeting with an investigator  
6 from our office?

7 A. Yes.

8 Q. And who was that?

9 A. That was Mr. Sowards.

10 Q. And when did you meet with Mr. Sowards?

11 A. That was on December 18th in 2002 and --

12 Q. 2002 or 2012?

13 A. I'm sorry?

14 Q. Was it 2002 or 2012?

15 A. Oh, I'm sorry. It was actually 2011.

16 Q. Okay.

17 A. Yeah, I read the wrong -- I read the previous sentence.

18 This declaration is an addendum from my previous affidavit from  
19 2002. Sorry about that. It was November 2nd, 2011, and after  
20 my telephone conference we realized that I did not meet in  
21 Tucson, I actually met in Salt Lake City. Mr. Sowards came to  
22 one of our bloodstain meetings and I met with him at that time.

23 Q. And at that time did you sign a supplemental declaration?

24 A. Yes.

25 Q. Could we take a look at that declaration, which is

1 Exhibit 122?

2 A. Yes, I have it in front of me.

3 Q. Is this the declaration that you signed in 2012?

4 A. That's correct.

5 Q. Could we take a look at the second page? That's your  
6 signature?

7 A. That's my signature, yes.

8 Q. Mr. James, do you recall whether you actually typed out  
9 this declaration or not?

10 A. I'm sorry again?

11 Q. Do you recall whether you typed this document?

12 A. Actually, the typed font is the same but we realized later  
13 that this declaration was actually typed out by Mr. Sowards  
14 after consultation with me, so the thought process is mine and  
15 the typing is his.

16 Q. And by signing this declaration, did you agree that  
17 everything in it was true and correct?

18 A. I did, yes.

19 Q. Could we take a quick look at Exhibit 49, which is a sealed  
20 exhibit? Mr. James, did you review this photograph?

21 A. Yes, I did.

22 Q. What do you see in this picture?

23 A. Well, it's a photograph of Rachel, you know, at the post  
24 mortem examination.

25 Q. And do you see some blood in this picture?



1 A. Yeah, there's one transfer on the sheet and there's blood  
2 -- apparent blood within her hair as well.

3 Q. And you also rereviewed some of the photographs that we  
4 just looked at in 2012?

5 A. Yes.

6 Q. Could we go back to your declaration, which is 122? And if  
7 we could enlarge paragraph 6. Actually, can you do both 6 and  
8 7? In your 2012 declaration did you conclude that the small  
9 bloodstains in the van were not typical of those produced  
10 during a beating?

11 A. Yes.

12 Q. And what was the basis of that conclusion?

13 A. Well, the fact that there was a single laceration on her  
14 head that was described by the pathologist and, you know, the  
15 photographs, and one laceration does not produce impact  
16 spatter. Impact spatter requires there to be exposed blood for  
17 the object to strike and that will then spatter the blood. The  
18 first blow often just produces blood flow unless it's a massive  
19 crushing injury, which is not this case, this type of case.

20 EXAMINATION

21 BY THE COURT:

22 Q. If I can ask a question. So you're saying the projection  
23 of blood wouldn't happen from the laceration? Is that what I  
24 understand your testimony to be?

25 A. Not from that single blow.

1 Q. But -- and I think the other piece of information you  
2 testified to was it was blood projection from her hair?

3 A. Right, that's from the swinging of her hair, yes.

4 Q. Right. But could the swinging be caused by blows to her as  
5 opposed to just somebody carrying her or movement of the van?

6 A. Well --

7 Q. And is there a difference between what kind of pattern  
8 would result from those two types of activities?

9 A. Well, I would say just in the absence of other injuries to  
10 her, that that was a less likely possibility.

11 Q. What if blood had collected in her hair from the  
12 laceration? I mean, I'm assuming -- I'm assuming you're basing  
13 your testimony on the fact that blood has collected in her hair  
14 from the laceration, right?

15 A. Yes, enough to be projected, you know, from movement, yes.

16 Q. So here's what I don't understand. Why do you assume that  
17 the projection is only from her being carried or transferred  
18 and not from being struck?

19 A. Well, it would require additional striking of her, of which  
20 there is no physical evidence to support that, no bruising or  
21 anything like that.

22 Q. Yeah, but I really want to focus on the blood on the seat  
23 right now?

24 A. Yes.

25 Q. Is it as likely that blood would be projected from her hair

1 if she was struck as it is if she were just simply being held  
2 and it's being projected from her head?

3 A. Well, there would have to be movement of her head while  
4 being carried.

5 Q. Either way?

6 A. Yes.

7 Q. So my next question is: Can you, in looking at the blood  
8 pattern on the seat, make a distinction, without any other  
9 facts, as to whether that is a result of her being struck or a  
10 result of her hair simply swinging because of the movement of  
11 the van?

12 A. Not without additional information.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION (Cont'd)

15 BY MS. SMITH:

16 Q. Mr. James, do you recall being interviewed a couple of  
17 months ago?

18 A. Yes, I do.

19 Q. And at that time did we discuss what might happen if Rachel  
20 had been repeatedly struck in the van with an overhead blow in  
21 terms of what blood evidence you might see?

22 A. Well, yes, the other -- the other facet of this -- of this  
23 possibility would be that if she's being struck multiple times,  
24 although not creating a laceration in the bloodied area, then  
25 there's no cast-off on the underlining of the roof of the

1 vehicle that, you know, we often -- often occurs, so that fact  
2 would be additional information as well and I did not see that.

3 Q. And if she was struck with a repeated lateral blow, would  
4 you see -- a repeated lateral blow in a bloody area, would that  
5 create a cast-off pattern as well?

6 A. Well, it depends on the directionality of the blow, if  
7 there was one, whether it's coming straight down with a back  
8 handed toward the ceiling, the underlining of the roof or a  
9 side blow, you would look for cast-off stains on the dashboard  
10 or some other nearby surface.

11 THE COURT: Do you know if those other surfaces were  
12 inspected, the ceiling and the dashboard?

13 THE WITNESS: I don't know. I didn't do the crime  
14 scene. There was no mention of anything whether there was or  
15 not that I recall.

16 BY MS. SMITH:

17 Q. My next question was going to be whether you saw any  
18 evidence of those types of cast-off in your review?

19 A. Yes, certainly.

20 Q. You saw those type of bloodstains?

21 A. I'm sorry?

22 Q. I'm sorry. Let me be more clear. Did you see in this case  
23 in your review of the materials any evidence of those types of  
24 cast-off stains in the van?

25 A. No, and, again, I think more importantly I don't think

1 there were sufficient number of photographs but there was no  
2 mention made of it by the investigator who actually did the  
3 inspection of the van.

4 Q. And, in general terms, how would you quantify the amount of  
5 blood that was present in the van?

6 THE COURT: I'm sorry. Quantify it with what?

7 BY MS. SMITH:

8 Q. Was it a large amount of blood, a small amount of blood in  
9 your experience investigating crime scenes?

10 A. Well, first of all, I can't quantitate it.

11 Q. Sorry?

12 A. I can only say qualitatively that from the photographs it  
13 did not appear to be an excessive amount of blood.

14 Q. Thank you.

15 A. The quantitation of blood in any scene is very difficult to  
16 accomplish.

17 Q. I asked the wrong question, I apologize, that was what I  
18 was going to.

19 A. That's okay.

20 Q. Mr. James, did you review the testimony of Detective  
21 Pesquiera at Mr. Jones' trial as part of this case?

22 A. Yes, I did.

23 Q. I want to show you the transcript from April 12th, 1995, at  
24 page 72. And here Ms. Pesquiera is describing her

25 interpretation of some of the stains in the van; is that

1 correct?

2 A. Yes.

3 Q. And she describes stain V-6 as being an impression stain;  
4 is that correct?

5 A. Yes.

6 Q. Sorry. I'm looking at lines 4 through 16. Thank you,  
7 Jennifer.

8 And do you agree or disagree with Ms. Pesquiera's  
9 conclusion?

10 A. Well, I don't agree with the fact that she called it  
11 impression -- an impression stain. I see no impression of  
12 anything. I do agree that she stated that the blood is soaked  
13 through but I don't think you can say how long it's been there  
14 either or how long it took to do that.

15 THE COURT: And can you just help me understand the  
16 difference between an impression stain and another type of  
17 stain? I think you called this a saturation -- you called it a  
18 saturation --

19 THE WITNESS: Yes.

20 THE COURT: -- earlier. What's -- what's the  
21 difference between saturation and an impression stain? What's  
22 an impression stain?

23 THE WITNESS: An impression stain -- in fact, we don't  
24 use that terminology but it has been used in the past. For  
25 example, and sometimes you can actually see them if someone

1 steps in blood and then creates some footwear impression,  
2 sometimes you can see on the carpet especially you may be able  
3 to see an outline of the shoe and that would be an impression  
4 stain, okay?

5 BY MS. SMITH:

6 Q. So it suggests that some object came in contact with the  
7 surface?

8 A. Some object, you know, compressing the area of blood  
9 saturation.

10 Q. And did you see any evidence of that type of compression in  
11 your review in this case?

12 A. No. In my opinion, it was a drip pattern anyway, I  
13 didn't --

14 Q. If we could take a look at starting at line 17 on this page  
15 and continuing on to the next page at line 3. And here we have  
16 some testimony about some of the other bloodstains, including  
17 V-7 and V-12. And the answer to -- and the answer to this  
18 question, Sergeant Pesquiera describes V-7 as a pattern stain.  
19 Do you agree with that? And, again, V-7 was that picture we  
20 looked at earlier with the little wood chip?

21 A. Well, they're spatter stains but that's the top level of  
22 the arrangement of the distribution of the categories.

23 Q. And that stain that we saw, could we go back to Exhibit 65A  
24 at page 83? And the bottom picture here shows stain V-7. Did  
25 you agree with Sergeant Pesquiera that this is a spatter stain?

1 A. I believe it's more consistent with a drip stain.

2 Q. Okay. And can we go back to the transcript at page 73?

3 And if we could look at line 25 on this page through line 15 on  
4 the following page. And here Sergeant Pesquiera's being asked  
5 about the stains on the seat that we talked about and in her  
6 answer she says that there was some type of blunt trauma that  
7 struck the static blood causing it to go out. Do you agree  
8 with that conclusion?

9 A. That's the one at the top of the page?

10 Q. At the bottom of the page here.

11 A. Your voice is still muffled.

12 Q. I'm sorry. At the end of her answer there at lines 14 and  
13 15, she says it appears that there was static blood already  
14 there and some type of blunt trauma struck that static blood,  
15 causing it to go out.

16 A. Again, I just touched that and made an arrow.

17 Q. That's okay.

18 A. She's saying some type of blunt trauma. I mean, no, not  
19 necessarily. It can also be just from the movement and the  
20 projection, so that's where we have the difference.

21 Q. And if we could go back to your 2012 declaration, which is  
22 122, and at paragraph 7. Here you explain that the term  
23 "projected" does not assume the act was violent. "Projected"  
24 could also be cast-off from the victim's hair as she was  
25 carried into the van while the van was moving or during



1 resuscitation efforts, correct?

2 A. Yes.

3 Q. So the term "projected" doesn't necessarily imply some sort  
4 of violent action?

5 A. That's correct.

6 Q. Did you also examine some bloodstains on the clothing that  
7 Barry Jones had been wearing on May 2nd, 1995?

8 A. Yes, I did.

9 Q. Could we go back to your affidavit, which is Exhibit 121 at  
10 page 5? And in paragraph 6, you describe some of the blood  
11 that was present on the clothing of Mr. Jones; is that correct?  
12 Here you're describing some of the bloodstains present on  
13 Mr. Jones' clothing?

14 A. Yes.

15 Q. And you said there's a few spatters on the sleeves of the  
16 T-shirt?

17 A. Yes.

18 Q. And there's also some blood transfer present on the shirt  
19 on both the sleeve and the rear of the shirt?

20 A. That's correct.

21 Q. The blue jeans also showed some blood transfer?

22 A. Yes.

23 Q. And then the brown work boots showed passive staining with  
24 some satellite spatters that could not be determined to be  
25 human blood but your observations were that this blood evidence

1 indicated contact and proximity to a source of wet blood,  
2 correct?

3 A. Yes.

4 Q. Do you recall that Sergeant Pesquiera also gave some  
5 testimony at trial about the blood on Mr. Jones' clothing?

6 A. I did.

7 Q. Can we go back to the transcript from April 12th, 1995, at  
8 page 74? If we can take a look at line 24 through line 13 on  
9 the next page. And here Sergeant Pesquiera is asked a question  
10 about the blood on the clothing that would be produced on the  
11 driver of the van. And she's asked: If blood droplets on the  
12 right sleeve were observed, would that be consistent with the  
13 kind of static versus spatter pattern that you described? And  
14 she said: Yes, it would.

15 Do you agree with Ms. Pesquiera that this spatter on the  
16 sleeve is consistent with her earlier testimony?

17 A. Well, first of all, the small spots could be -- are  
18 classified as spatter.

19 Q. Okay.

20 A. But it's a matter of how much further you take that. I  
21 wouldn't agree that they would be consistent necessarily with  
22 impact spatter because you can get small spatters of blood, you  
23 know, from just carrying someone around. The blood tends to,  
24 you know, go through the air like that sometimes. And it's  
25 very few stains and a few stains do not make a pattern. We

1 teach that in both basic and advanced courses. So that  
2 probably my best conclusion would be that there are too few  
3 stains to really interpret.

4 Q. That was going to be my next question. Thank you. So  
5 there's not enough blood present here to conclude anything  
6 about whether this was caused by a beating?

7 A. Yes, there's just too few stains.

8 Q. Could we go back to your affidavit, which is Exhibit 121?  
9 And if we look at paragraph 7 on page 6, these are some of your  
10 conclusions about the blood that you observed in this case,  
11 including the blood on Mr. Jones' clothing. And, at the end of  
12 this paragraph, you conclude that the bloodstains prove only  
13 that his clothing, whether he was wearing them or not, was at  
14 some point in time close to and in contact with the bleeding  
15 source, some of which was consistent with the blood of Rachel  
16 Gray. These stains could have occurred as a result of lifting  
17 or otherwise attending to an injured person; is that correct?

18 A. Yes, that's my opinion.

19 Q. And could we take a look at the next paragraph, which is  
20 paragraph 8? Oh, I'm sorry, I'm not going to refer to that  
21 paragraph.

22 I don't have any other questions at this time for you,  
23 Mr. James.

24 THE COURT: Cross-examination?  
25

## 1 CROSS-EXAMINATION

2 BY MR. BRACCIO:

3 Q. Good morning, Mr. James.

4 A. Good morning, sir.

5 Q. Do you recall how much you've billed so far in this case  
6 for your time?7 A. I'm trying to think. I didn't have any -- it was so long  
8 ago, I don't have any record of it. But I don't think it was  
9 any more than 1,500 to 2,000 dollars for my work on the case so  
10 far.11 Q. Okay. If your invoices reflect that it was just over  
12 \$5,000, would you disagree with that?

13 A. I'm sorry?

14 Q. If your invoices indicated it was just over \$5,000, would  
15 you disagree with that?16 A. I'd have to see it, but if there is one available, it  
17 likely includes my travel expenses as well.18 Q. There is no licensing for bloodstain interpretation,  
19 correct?

20 A. No, there is not.

21 Q. And the organization that you are affiliated with, the  
22 International Association of Bloodstain Pattern Analysts, is  
23 not accredited by anyone, correct?24 A. You asked me that question in my -- in our discussion on  
25 the phone. I don't know of any organizations that are

1 accredited so I'm not sure what you mean by that.

2 Q. No law enforcement agency accredits that?

3 A. We have many law enforcement personnel in the organization  
4 but I don't know that it's been accredited by anybody.

5 Q. It's a private organization?

6 A. Private? I suppose -- I suppose it is because it's not  
7 limited -- people who join have to apply. We have private  
8 funding that allows for us to have conferences. I mean, I  
9 don't know. Is the American Academy of Forensic Scientists  
10 private? I don't know that.

11 Q. You teach law enforcement around the country on bloodstain  
12 interpretation evidence, correct?

13 A. Yes.

14 Q. Including that week-long basic course in bloodstain  
15 interpretation you previously mentioned?

16 A. Yes, that's our primary basic course, yes.

17 Q. And after you teach this course to officers and detectives,  
18 they go out into the field and utilize those teachings at crime  
19 scenes, correct?

20 A. Well, yes, they're now getting prepared to do that. But we  
21 emphasize in our basic course that a basic course does not make  
22 one an expert we emphasize that and we strongly recommend an  
23 advanced course and case work and peer review as a general  
24 procedure to follow.

25 Q. Thank you. I have no further questions.

1 THE COURT: Any redirect?

2 MS. SMITH: Nothing, Your Honor.

3 EXAMINATION

4 BY THE COURT:

5 Q. Okay. I've got a couple of questions. This kind of goes  
6 back to a question I was asking you about the projection slash  
7 cast-off analysis you did earlier, for instance, on the seat.  
8 What other -- so, I think you understand the theory of the  
9 prosecution was that Rachel being struck while she was in the  
10 seat. You understand that, is that your understanding of the  
11 facts?

12 A. Yes. Yes, Your Honor.

13 Q. Okay. And I believe you testified that the blood evidence  
14 was limited in scope. When I say "scope", I mean of -- within  
15 the van?

16 A. Limited in scope, yes. I think I said it was not an  
17 excessive amount or something like that, I think.

18 Q. My question is this: I think you identified other areas  
19 that would have been -- that you would expect to see blood if  
20 she was being struck. Is that what -- is that what you said?

21 A. Yes, like cast-off in other areas, yes.

22 Q. For instance the ceiling material, the covering --

23 A. Right.

24 Q. -- on the ceiling or the dashboard?

25 A. Or any other nearby surface, yes.

1 Q. Okay. Do you know if any blood collection in those areas  
2 was done?

3 A. I do not.

4 Q. Do you know, based on your experience, if one would look  
5 for blood in those areas if one were investigating this type of  
6 crime?

7 A. I would expect they would.

8 Q. Knowing the theory of the prosecution in this case, did you  
9 form an opinion as to whether or not you thought the blood  
10 collection was sufficient?

11 A. That's difficult to answer because I didn't have any  
12 opportunity to examine the van, if I ever would have, so it's  
13 difficult to say.

14 Q. Let me ask this question another way. Do you know if blood  
15 was not collected from those other areas we just talked about  
16 because there was no blood or because they didn't look for  
17 blood there?

18 A. I don't know whether it was A or B.

19 Q. Did you review reports?

20 A. Yes.

21 Q. Did the reports give an indication that they either looked  
22 for blood there or didn't look for blood there?

23 A. I don't believe I have any recollection of that, no.

24 Q. You have been testifying about principles of blood spatter  
25 analysis that you used and brought to bear in this case; is

1 that right?

2 A. Yes, sir.

3 Q. Were the principles that you used in your analysis in 2002  
4 and then more recently, were those principles in place in 1994?

5 A. You mean the actual document?

6 Q. No, no, no. I mean the principles that you used to analyze  
7 blood patterns, bloodstaining that you just testified to. You  
8 did this in 2002, right?

9 A. Yes.

10 Q. What I'm trying to ask you is, were the same principles  
11 available in the early 1990s?

12 A. Yes, they were.

13 THE COURT: Would -- has my questions generated any  
14 additional questions that the respondents would like to ask?

15 MR. BRACCIO: No, Your Honor.

16 THE COURT: That the petitioners would like to ask,  
17 any questions?

18 MS. SMITH: No, Your Honor, no.

19 THE COURT: Okay. Thank you very much, sir. You're  
20 excused.

21 Okay, your next witness.

22 MR. SANDMAN: Your Honor, our next witness was to be  
23 Judge Hazel and I'll check to see if he's arrived yet.

24 THE COURT: That's fine. I'm going to step out for a  
25 second.



1 (A recess was had.)

2 THE COURT: Okay. Your next witness?

3 MR. SANDMAN: James Hazel.

4 THE COURT: Pardon me?

5 MR. SANDMAN: James Hazel.

6 THE COURT: Sir, if you could please come forward. If  
7 you could just stand right there, madam clerk will swear you  
8 in.

9 JAMES WILLIAM HAZEL, JR., WITNESS, WAS SWORN.

10 THE COURT: Have a seat, please.

11 Mr. Sandman?

12 MR. SANDMAN: Okay. Thank you.

13 DIRECT EXAMINATION

14 BY MR. SANDMAN:

15 Q. Can you state your name for the record, please?

16 A. James William Hazel, Jr.

17 Q. Okay. And can you tell us, what is your current  
18 occupation?

19 A. I'm a judge.

20 Q. Okay. And where are you sitting as a judge?

21 A. I'm currently the presiding judge of the city of Apache  
22 Junction, Arizona, in Pinal County, Arizona. I'm the presiding  
23 city magistrate for Pinal County, Arizona. And I'm also an  
24 initial appearance commissioner for Pinal County, Arizona.

25 Q. And how long have you been in that position as a judge in

1 the Apache magistrate court there?

2 A. Since December 15th, 2008.

3 Q. Okay. And can you tell us when you were admitted to the  
4 Arizona bar?

5 A. 1988.

6 Q. All right. And so can you give us sort of a brief overview  
7 of what you were doing between, say, 1988, and when you went on  
8 the bench in 2008?

9 A. After I passed the Arizona bar exam, I went to work for the  
10 city of Phoenix as a prosecutor and I did that for two and a  
11 half years. In August of twenty -- August of 1990 I was hired  
12 by the city of Mesa as a contract public defender. I worked --  
13 an attorney named Andy Biggs, who is now a United States  
14 Congressman, him and I had an office together and we did city  
15 court matters and city of Mesa, city of Phoenix, and then we  
16 started out with representation contracts in Maricopa County  
17 Superior Court.

18 In -- that eventually led to me having a contract in Gila  
19 County, Arizona, in the mid-'90s, after Mr. -- Congressman  
20 Biggs retired. And in 2000 I was elected the Gila County  
21 Attorney. A year later I was appointed to the superior court  
22 and then I lost a contested election I think in 2002 and a  
23 couple of weeks later I was hired as a judge in the city of  
24 Mesa and I stayed there until 2008.

25 Q. Okay. And do you remember that you were appointed to

1 represent Barry Lee Jones in his state post-conviction  
2 proceeding?

3 A. Absolutely.

4 Q. And do you remember that was around September of 1999 when  
5 you were appointed?

6 A. Yes, if that's the date you say, I have no reason to  
7 disagree with you.

8 Q. Can we take a look at Exhibit 126?

9 A. Okay. I'm going to look on the screen for that?

10 Q. Yes, sir.

11 THE WITNESS: If it's all right with Your Honor, can I  
12 move a little closer because of my vision.

13 THE COURT: Absolutely.

14 THE WITNESS: It's difficult for me to see but I can  
15 see that's an order.

16 THE COURT: We can blow that up, too.

17 BY MR. SANDMAN:

18 Q. If you can blow that up at the top there, I wanted you to  
19 capture the date.

20 A. I can see the September 22nd on it.

21 Q. Okay. And you recognize this is the order of appointment  
22 to Mr. Jones' case?

23 A. Yes, you showed me that at the deposition.

24 Q. Okay. And I want to direct your attention to, it's  
25 actually the last sentence on that page that goes over onto the

1 next page. If we can just blow that up through there. And do  
2 you see that the order of the -- this is an order from the  
3 Arizona Supreme Court appointing you, that it states that you  
4 should direct your request for the appointment of investigators  
5 and experts to the superior court pursuant to ARS  
6 Section 13-4013(b), as in boy, correct?

7 A. Yes, I can see that there.

8 Q. Okay. Now, do you -- I just want to sort of skip ahead in  
9 time, but do you remember approximately when the Pima County  
10 Superior Court denied relief to Mr. Jones in the  
11 post-conviction proceedings?

12 A. No, I don't remember the exact date.

13 Q. Can we just look at Exhibit 137? Do you recognize  
14 Exhibit 137 as the October 11, 2000, decision of the Pima  
15 County Superior Court deciding Mr. Jones' post-conviction  
16 petition?

17 A. Yes, and you showed me that at the deposition.

18 Q. Okay. And relief was denied to Mr. Jones in those  
19 proceedings; is that right?

20 A. That's what it says, yes, sir.

21 Q. And then can we take a look at Exhibit 138? So the  
22 decision was made denying relief in October of 2000 and then do  
23 you recognize Exhibit 138 as an order permitting you to  
24 withdraw from representing Mr. Jones?

25 A. Yes.

1 Q. And that looks like it was filed November 27, 2000,  
2 correct?

3 A. The order, the date that it was filed by the clerk you  
4 mean, is that what you're asking me?

5 Q. Yes.

6 A. It appears to say November 29th that I see.

7 Q. Okay.

8 A. And then -- or it's file stamped and then there's another  
9 date over on the other that says November 27th so there's two  
10 dates at the top.

11 Q. Right. It appears as though the date on my right is the  
12 clerk's stamp from the Arizona Supreme Court and -- excuse  
13 me -- the stamp on the left is from the clerk in Pima County.

14 A. Okay. If you say so. I can't read that writing so, I'm  
15 sorry, yes, it looks like the November 27th date is Supreme  
16 Court, yes.

17 Q. So is that when you withdrew? Is that when you took the  
18 position as the Gila County Attorney in Arizona?

19 A. I was sworn in right after the first of January of that  
20 next year.

21 Q. Okay. Prior to representing Mr. Jones in his death penalty  
22 post-conviction proceeding, had you ever represented a  
23 defendant in a capital post-conviction proceeding?

24 A. I want to answer it honestly. I can't remember the order  
25 of different appointments. I know there was multiple

1 appointments so I can't tell you if this was the first one but  
2 it wasn't a common occurrence, but I can't remember the order  
3 of which I was appointed to persons then.

4 Q. Okay. Do you recall that technically you were not really  
5 qualified experientially to post-conviction cases in capital  
6 cases at the time that you were appointed to Mr. Jones' case?

7 A. Yes, we discussed that at the deposition and I agreed with  
8 you, yes.

9 Q. I'd like to show you Exhibit 128. If you could blow up  
10 maybe the first three-quarters of that page there. Do you  
11 recognize Exhibit 128 as a billing statement or at least the  
12 cover sheet of a billing statement that you submitted on or  
13 about March 28, 2000, in connection with your work on  
14 Mr. Jones' case?

15 A. Yes.

16 Q. And if you could turn to the final page of the exhibit,  
17 which I believe is on page 4, if you could blow that up for us.  
18 You see the total hours expended in this billing statement was  
19 98.7 hours; is that right?

20 A. That's what it says at the bottom, yes, sir.

21 Q. And it looks like this is the final billing entry on that  
22 page as March 28, 2000, which was the day you filed the state  
23 post-conviction petition for Mr. Jones, correct?

24 A. That's what the -- if you're asking me what it says there,  
25 yes, sir.

1 Q. Okay. Now, would you agree that the itemization or the  
2 description of your work on Exhibit 128, which is the work that  
3 you did from the time of appointment through the filing of the  
4 post-conviction petition, would you believe that that record,  
5 as well as the contents of your file, in other words, the work  
6 product portion of the file that you created, that those  
7 documents, the billing record and your file, would constitute  
8 the best record of what you did in Mr. Jones' case, the work  
9 that you did?

10 A. Well, I always strive to be accurate with my bills and  
11 other documents so -- and as we discussed in the deposition, I  
12 believe that to be the case.

13 MR. SANDMAN: And, Your Honor, just for the record,  
14 the post-conviction file in Mr. Jones' state court proceedings  
15 is marked as Exhibit 2 in these proceedings. So that would --

16 THE COURT: So 1 is the trial record and 2 is the  
17 post-conviction relief record?

18 MR. SANDMAN: Correct.

19 THE COURT: Okay.

20 BY MR. SANDMAN:

21 Q. Now, when you received your appointment, did you -- soon  
22 after obtaining your appointment, did you present a funding  
23 request to the Superior Court for investigative assistance?

24 A. Yes.

25 Q. And can we take a look at Exhibit 130? And if you could

1 blow up the first -- that's good right there. And I think we  
2 said you were appointed in September of '99 and this document  
3 appears to be file stamped October '99; is that right?

4 A. Yeah, I can't read the date. I'm sorry.

5 Q. It looks like October 29th. I want to direct your  
6 attention to the -- down -- if we can capture lines 1 through  
7 -- or 12 through 24 there. Now, when we started our discussion  
8 this morning, we looked at the Arizona Supreme Court order  
9 which directed that you present funding requests pursuant to  
10 Arizona statute, I believe it was 13-4013. Do you remember  
11 that?

12 A. Yes.

13 Q. And in your -- in this particular request that you filed,  
14 you cited as authority Rule 706(a) of the Arizona Rules of  
15 Evidence?

16 A. Yes.

17 Q. And do you know what is provided in Rule 706(a) of the  
18 Arizona Rules of Evidence?

19 A. I can't recall what was provided then.

20 Q. Okay.

21 A. I don't have the rule in front of me, so --

22 Q. In any event, you didn't -- you didn't make the request  
23 pursuant to the authority directed by the Arizona Supreme  
24 Court; is that correct?

25 A. As I mentioned in the deposition, the document speaks for



1     itself, so --

2     Q.   Okay.  Now, down on line it looks like starting around 19  
3     or 20, you said:  An investigator is necessary to review the  
4     defense investigation already submitted to the trial court to  
5     determine if all necessary defense evidence was presented.  
6     Correct?

7     A.   Yeah, the document speaks for itself, yes, sir.

8     Q.   And so at the time you filed this request, do you believe  
9     that -- that you thought that some type of investigation was  
10    necessary to assess the quality of the investigation that was  
11    done by trial counsel?

12    A.   I wouldn't have filed the motion if I didn't believe that  
13    to be true.

14    Q.   Okay.  And when you took on the appointment and at the time  
15    you filed this initial request for assistance, did you believe  
16    that a post-conviction investigation was necessary to allow for  
17    the discovery of all reliable claims, including ineffective  
18    assistance of counsel claims?

19    A.   Let me answer that and then if I didn't answer it the way  
20    you want me to, you can correct me or ask me another question.  
21    In any major case, I always believe that the use of a qualified  
22    investigator was of the utmost importance.

23    Q.   And did you believe in this case that it was necessary to  
24    allow for the potential of discovering claims, reliable claims,  
25    of ineffective assistance of counsel against trial counsel?

1 A. Yes, as made -- as the motion states.

2 Q. Ultimately, was there any investigation that was done in  
3 Mr. Jones' case during the post-conviction proceedings?

4 A. You mean was there investigators?

5 Q. Well, either -- well, let's break it down then. Did you  
6 obtain any assistance from an investigator in Mr. Jones' case?

7 A. I don't recall that I did. I think I had to do the  
8 interviews and follow-up myself.

9 Q. Okay. And in terms of any investigation that you did, if  
10 you did any, that would be reflected on your invoice, at least  
11 anything you did prior to the filing of the petition?

12 A. Absolutely.

13 Q. And can you recall any investigation other than your  
14 interview of the co-defendant, Angela Gray?

15 A. Well, I don't have the bill in front of me but I know -- my  
16 recollection is I spoke to the other lawyer as well.

17 THE COURT: I'm sorry?

18 THE WITNESS: I spoke to the other lawyer as well.

19 THE COURT: No, I heard that. I'm a little confused  
20 about the question and answer that was mentioned earlier. As I  
21 understood it, you made an application for permission to hire  
22 an investigator.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Okay. And then -- but then you said you  
25 did the investigation yourself. I'm sort of missing what

1 happened in between. Did you -- were you not -- was the  
2 request to hire an investigator not approved or did you just  
3 decide that you're going to do the investigation yourself?

4 THE WITNESS: Okay. I can answer that question 'cause  
5 I don't want to interfere with the lawyer part of what he's  
6 trying to do. If you'd like me to explain, I can.

7 THE COURT: Please.

8 THE WITNESS: As Mr. Sandman will bring out, there was  
9 two, I believe, requests for investigators that were denied.  
10 And then --

11 THE COURT: You made two requests?

12 THE WITNESS: Yes.

13 THE COURT: Each one was denied?

14 THE WITNESS: Yes. And this was all discussed in the  
15 deposition. But my view I expressed to him, at that time, the  
16 court did not favor appointing people to assist, and whether it  
17 was in Maricopa, Pima County, that was just not how it was -- I  
18 can't explain why, and I explained to all the attorneys in the  
19 deposition that it has affected how I work as a judge because  
20 you want to ultimately get to the merits of the case and so if  
21 someone makes a reasonable claim, then you want to move forward  
22 with that and try to do that. That was just not the common  
23 Arizona experience at that time.

24 THE COURT: So you asked for the resources twice and  
25 you were told no twice, which is why you ended up doing the

1 investigation yourself?

2 THE WITNESS: Yes. I hope that answers your question.

3 THE COURT: That -- that answers my question. Go  
4 ahead.

5 BY MR. SANDMAN:

6 Q. I was going to refer you to Exhibit 1 -- back to your  
7 invoice which summarizes the work you did before.

8 A. Go to another exhibit then?

9 Q. This is Exhibit 128.

10 A. Because Exhibit 130 is still up here, I'm sorry.

11 Q. If you can go to page 2 and maybe blow up as much of that  
12 page as you can.

13 A. I can see it generally. If you have a specific line you  
14 want me to look at, I can get closer.

15 Q. Let's just look at the first half. Do you -- other than --  
16 it looks like you had a three-tenths hour conversation with  
17 Sean Bruner on September 15, '99.

18 A. Okay. That would be at the top of the page; is that  
19 correct?

20 Q. Right.

21 A. Yes, I saw that there.

22 Q. And then it looks like you had another conversation with  
23 him a few days or a week later or so on the 22nd of September,  
24 1999?

25 A. I see the September 22nd.

1 Q. Okay.

2 A. I don't see the September 15th one. You're referring to  
3 the phone call? I'm not trying to argue with you.

4 Q. September 15th is about the third billing entry.

5 A. Where where it says "letter", you mean?

6 Q. I apologize. My mistake.

7 A. Okay.

8 Q. The telephone call was actually on September 22nd, correct?

9 A. Okay.

10 Q. And that was before you had the file?

11 A. I don't recall when I got the file.

12 Q. Well -- but there aren't any billing records for any record  
13 review until it looks like the end of October, is that right?

14 A. What line would you like me to look at? I'm sorry.

15 Q. October 29th, 1999.

16 A. Yes, I can see that it says that, yes.

17 Q. Okay. And then if you review the rest of the page through  
18 November 11th, do you see any other activity other than  
19 reviewing the file?

20 A. There's a lot of reviews in there. There's -- it talks  
21 about picking up the boxes and the letters. It says filing a  
22 motion. Are you talking about just November or --

23 Q. Yeah, just through that page. There's no investigation  
24 that you conducted during that time period shown on those  
25 entries, correct?

1 A. That's correct. And as I mentioned in the deposition that  
2 the bill speaks for itself and --

3 Q. All right. So you're saying that if there was any  
4 investigative activity on your part, that it should be  
5 reflected on the bill if it happened during this time period?

6 A. Well, as I told you on the deposition that I did my best I  
7 could to do the bill and, unfortunately, traditionally I  
8 underbilled but I certainly cannot testify under oath now that  
9 a certain thing happened on a certain day that's not reflected  
10 in a bill, and I wouldn't attempt to.

11 Q. Now, if we can take a look at Exhibit 131. And if we could  
12 enlarge that. Now, this was the court's order denying your  
13 first request for investigative assistance; is that right?

14 A. If you're saying that's what it is, then it is the first  
15 one.

16 Q. Okay.

17 A. You know --

18 Q. The funding request we looked at you had filed on  
19 September 22nd, '99, and that's referenced in the minute entry?

20 A. Yes, I can see that.

21 Q. And the court indicated about six lines from the bottom  
22 that none of the foregoing motions recites any specific reasons  
23 to support the need for such appointments at the present time,  
24 including the investigative assistance, correct?

25 A. I think the order speaks for itself.

1 Q. And do you know what the requirements are in ARS 13-4013,  
2 which is the statute that the Arizona Supreme Court dictated  
3 that you follow in requesting experts or investigative  
4 assistance?

5 A. I don't have the statute in front of me at this time.

6 Q. Okay. Let's take a look at Exhibit 132. That's fine.  
7 Now, this was a motion for reconsideration that you filed in  
8 connection with your request for investigative assistance,  
9 correct?

10 A. That's how it's titled, yes, sir.

11 Q. Okay. And it looks like it's file stamped January 3, 2000;  
12 is that right? I'm not sure that date's showing but if the  
13 record shows that, that's correct, right?

14 A. I have no reason to disagree with the file stamp that you  
15 say exists. I can't see it but if you say it's there --

16 Q. All right. If we can enlarge 13 through 17 on that page.  
17 And this is similar to the motion that you filed in September  
18 of 1999?

19 A. Uh-huh.

20 Q. You're relying on legal authority in 706(a) of the Arizona  
21 Rules of Evidence which permits the court and the parties, you  
22 know, to agree that the court appoint experts that are to  
23 report to the parties and the court. You're citing that as  
24 authority as opposed to the statute that actually regulates the  
25 appointment of indigent defense services in ARS 13-4013,

1 correct?

2 A. The motion speaks for itself.

3 Q. Do you believe that in order to or do you expect that in  
4 order to obtain funding in a state post-conviction proceeding  
5 that you would need to demonstrate facial compliance with  
6 ARS 13-4013?

7 A. Are you asking me what's in the judge's mind?

8 Q. No, I'm asking, as state post-conviction counsel, would you  
9 have expected that, in accordance with the Arizona Supreme  
10 Court order, that you would have to show some type of facial  
11 compliance with ARS 13-4013 in order to get funding in an --  
12 indigent defense funding in this case?

13 A. Honestly, no. I don't think the judge was going to grant  
14 it no matter what I put down on that piece of paper.

15 Q. Well, until you -- well, let me strike that.

16 THE COURT: Mr. Sandman, let me ask a question. Is  
17 what you're getting at here, you think he's referring to the  
18 wrong authority in making the request to the court, is that  
19 your point?

20 MR. SANDMAN: Well, ultimately the court makes a  
21 ruling on that in response to this motion, but --

22 THE COURT: And in any of these filings, did the court  
23 point out to him that he was relying on the wrong authority?

24 MR. SANDMAN: Yes.

25 THE COURT: And did the court ask him to make a



1 request under the appropriate authority?

2 MR. SANDMAN: Well, the court, and I'm about to get to  
3 this but, yes, the answer is -- well, the court didn't --  
4 didn't advise him to do anything.

5 THE COURT: To resubmit his request?

6 MR. SANDMAN: What the court said was that the request  
7 failed to comply and cited the statute and the cases and then  
8 left it to Mr. Hazel, I suppose.

9 THE COURT: I'll let you continue but I have one more  
10 question based upon the witness's answer to your last question.

11 Sir, I think what you said, if I understood correctly and I  
12 just want to make sure I'm understanding what you're saying  
13 correctly, is you believed that the court would not have  
14 approved your authority whether or not you asked for it under  
15 the right authority; is that what you were saying?

16 THE WITNESS: Yes.

17 THE COURT: Why? Why do you say that?

18 THE WITNESS: I did this extensively in Maricopa  
19 County. I know this is a different court and a different judge  
20 but the culture at that time was that you didn't get experts,  
21 you didn't get investigators, you didn't get transcripts. I  
22 had done prior death penalty cases. Judges had denied  
23 transcripts for a defendant that -- my client who had prior  
24 trial where the prosecutor used the same confession in two sets  
25 of facts. That was just how it was done.

1 And, for example, everything was denied. So if you'd  
2 submit a bill -- a perfect example was one of the death penalty  
3 cases I did. You'd submit the bill to the judge, she'd cut it  
4 in half and say: Thanks, you've got experience at the benefit  
5 of the Arizona Superior Court. It was just the culture of how  
6 it was done there.

7 There was one case out of Coconino County that I worked on  
8 briefly and when I went over the transcripts, you could see how  
9 it's completely different there. That judge, I forget his  
10 name, actually provided resources to the attorneys.

11 THE COURT: Thank you.

12 Go ahead, Mr. Sandman.

13 BY MR. SANDMAN:

14 Q. In your experience in Pima County to date, can you point to  
15 a case or an example of where you filed an application for  
16 funding that cited the appropriate statutory authority and  
17 provided the necessary elements required by that authority in  
18 ARS 13-4013?

19 A. No.

20 Q. And would one expect that a lawyer who never complied with  
21 ARS 4013 might have the experience of not obtaining funding as  
22 easily as, for example, a lawyer who did comply with the  
23 statutory requirements?

24 A. That can be your opinion.

25 Q. Did -- was your bill cut in this case?

1 A. I don't recall.

2 Q. The record will show whether your bill was cut?

3 A. Well, of course. I'm not trying to say this judge cut the  
4 bill.

5 Q. All right. And at page 2 of Exhibit 132, at lines 10  
6 through 12, in support of your request for an investigator, you  
7 indicated you needed one to determine if the case was fully  
8 investigated.

9 Do you see that during the trial proceedings?

10 A. That's at line 11, yes, I can see that.

11 Q. And so at least at this stage now, you were appointed in  
12 September and you've reviewed a lot of the -- quite a bit of  
13 the file, correct, by March of 2000?

14 A. As the bill indicated, yes, sir.

15 Q. Okay. And you were -- after reviewing the trial attorney's  
16 file, you had questions about whether they had fully  
17 investigated the case, correct?

18 A. Absolutely.

19 Q. And if we could turn to page 133 or Exhibit 133, excuse me.  
20 Now, this is the trial court ruling denying your motion for  
21 reconsideration dated January 19, 2000; is that right?

22 A. If that's what you say it is, or if you want me to read the  
23 whole thing, I can. I can see the date.

24 Q. And if you can just blow up the ruling itself. And you see  
25 in the ruling that the court has denied the motion for

1 reconsideration because it failed to comply with

2 ARS 13-4013(b)?

3 A. That was the judge's opinion.

4 Q. Well, let me ask you this, if -- if your application for  
5 funding failed to comply with ARS 4013(b), then the court had  
6 no discretion to grant your request for funding, correct?

7 A. That's your opinion. I don't agree with you.

8 Q. Is there --

9 A. I guess it's your definition of "showing". I think what I  
10 laid out there was a showing.

11 Q. Okay. And then in explaining its decision as to why the  
12 court determined that you had not complied with ARS 4013(b), if  
13 we could blow up just the last few lines of the order, the  
14 court there is quoting --

15 A. Yes, I can read that.

16 Q. The court is actually, in this section of its decision,  
17 quoting from an Arizona Supreme Court case. You agree that the  
18 trial court is bound to follow the Arizona Supreme Court?

19 A. I would hope so.

20 Q. Okay. And the court cites there that undeveloped  
21 assertions that assistance would be beneficial are not enough.

22 Do you see that?

23 A. I can read that.

24 Q. Okay. Now, did you -- after you received this ruling in  
25 January of 2000, did you attempt to formulate a -- an

1 application for funding that addressed the trial court's  
2 concerns about --

3 A. The billing statement would show that. I don't think I  
4 did.

5 Q. Okay. Now, do you think that, as part of your  
6 responsibility to Mr. Jones as his attorney in a capital  
7 post-conviction proceeding, that it would have been important  
8 to him for his attorney to take this ruling and then attempt to  
9 craft an application that would satisfy the statutory  
10 requirements instead of Rule 706 of the rules of evidence?

11 A. I guess in hindsight it could have been done differently.  
12 I've already expressed my opinion about what I thought the  
13 judge was going to do. And, as you can see from the motion,  
14 the attorney general didn't oppose the appointment of an expert  
15 so I --

16 Q. Do you -- well, let me strike that and ask you, have you  
17 undertaken some reexamination of your file in this -- in this  
18 case since you've been identified as a witness and had your  
19 deposition taken and so on?

20 A. Well, you sent me a series of documents that you asked me  
21 to review and then we had a lengthy deposition where you asked  
22 me a number of questions and provided documents that you wanted  
23 me to look at, of course.

24 Q. Okay. And based on your more recent examination of the  
25 trial file and your file as well as some of the trial

1 transcripts, do you agree that the timing of Rachel's injuries  
2 was a central issue at Mr. Jones' trial?

3 A. Yes.

4 Q. Now, since you -- since the timing of Rachel's -- and  
5 that's apparent from the record, correct, from the trial  
6 proceedings at Mr. Jones' case, that the timing of the injuries  
7 was a central issue?

8 A. I think it would be but I guess that would have been a  
9 question for the jury at that particular point.

10 Q. Well, the prosecutor -- the prosecution presented evidence  
11 that Rachel's injuries were inflicted on Sunday, May 1st, 1994?

12 A. We talked about that at the deposition.

13 Q. Okay. So the record that you reviewed demonstrated to you,  
14 without any outside investigation at all, that the timing of  
15 the injuries was a central issue at the trial?

16 A. It showed what the state's position was, yeah.

17 Q. And since the timing of Rachel's injuries were a central  
18 issue and you have testified it was your objective to determine  
19 if the case had been fully investigated by trial counsel, did  
20 you ever investigate it -- excuse me -- did you ever  
21 investigate whether trial counsel had adequately investigated  
22 the timing of Rachel's injuries?

23 A. If you could narrow the scope of the that question. If  
24 "investigate" means I talked to people about the case, I would  
25 say yes but I think you're looking for something more. I'm not

1 trying to be difficult but --

2 Q. Well --

3 A. If you're asking me if I went to the fire station and  
4 talked to the firefighters, no. If you're asking me if I  
5 talked to Mr. Jones and others, including the original  
6 co-defendant, the answer then is yes. But, again, the bill  
7 speaks for itself. So I'm certainly not going to sit here  
8 18 years or whatever after and try to claim that something not  
9 on the bill happened at a date, time, and place.

10 Q. Okay. And if the billing record shows that nearly  
11 100 percent of your time was spent reviewing documents and  
12 records and writing the petition and meeting once or twice with  
13 Mr. Jones and one time with the co-defendant, then that would  
14 be a fair account of what you did if that's what the bill  
15 shows, correct?

16 A. I always testified, whether here or in the deposition, the  
17 bill speaks for itself. I'm not going to try to go back, and  
18 I've told you before, I've had two major surgeries, regardless  
19 of this new thing with my eye. And so memory issues are not  
20 the best. So I'm certainly not going to try to claim that I  
21 did something that's not reflected in the bill and I've told  
22 you that before.

23 Q. Do you recall, based on your review -- recent reexamination  
24 of the records that Dr. Howard testified at Mr. Jones' trial  
25 that all Rachel's injuries were consistent with infliction on

1 Sunday afternoon, May 1, 1994?

2 A. That's what you told me at the deposition, yes.

3 Q. Well, did you see that --

4 A. You showed me that, yes; you showed me that at the  
5 deposition. I don't disagree.

6 Q. All right. So you satisfied yourself, based on the records  
7 shown to you at your deposition, that that was Dr. Howard's  
8 testimony, that the injuries were consistent with infliction on  
9 May 1, correct?

10 A. Yes, you presented that to me.

11 Q. Now, did you also observe, based on your review of the  
12 record, that trial counsel posed no questions to Dr. Howard on  
13 the time of injuries, correct?

14 A. You showed me that at the deposition, yes, sir.

15 Q. And then trial counsel didn't present any evidence in  
16 support of an alternative timeline at Mr. Jones' trial,  
17 correct?

18 A. You pointed that out at the deposition, yes, sir.

19 Q. And all of that, at least in terms of what Dr. Howard said  
20 and the absence of any cross-examination by defense counsel,  
21 the failure to present any alternative timeline, that's  
22 something you could determine just on reviewing the record  
23 without any outside investigation, correct?

24 A. It seems like there was a lot of compounds in there but,  
25 yes -- yeah, obviously you get a feel for the case by reviewing



1 the trial record, absolutely.

2 Q. Okay. Now, and so here's my question. With the absence of  
3 cross-examination of Dr. Howard by trial counsel and trial  
4 counsel's failure to challenge the state's timeline -- timeline  
5 with any defense evidence, would that give rise to a question  
6 whether trial counsel had adequately investigated the time of  
7 injuries question?

8 A. Yes, I believe so.

9 Q. Okay. So reviewing the record and looking at the state's  
10 theory, looking at the absence of any cross-examination,  
11 looking at the absence of defense evidence, there's a question  
12 regarding the adequacy of trial counsel's investigation at the  
13 time of injuries, and what I would like to know is, is that  
14 something that you could have conveyed and communicated to  
15 Judge Quigley, who was the state post-conviction judge, in  
16 support of funding so that you could investigate further  
17 whether trial counsel's investigation was adequate?

18 A. So are you asking me --

19 Q. Let me start over. What I'm trying to get at is whether  
20 you could have taken all this information that you've just told  
21 us, that the absence of cross-examination of Dr. Howard, the  
22 lack of any defense alternatives to the time of injuries,  
23 whether seeing that raised a question about the adequacy of  
24 trial counsel's investigation. Now you've already said yes,  
25 that those record facts raise a question about the adequacy of

1 trial counsel's investigation, correct? You've said that --  
2 you've said that.

3 And I want to know, could you have taken that information  
4 to Judge Quigley and said: Judge, we've got a guy who's  
5 convicted on a timeline. The evidence of the prosecution was  
6 never challenged. There's not a single question by the trial  
7 lawyer contesting this timeline. And this says to me that  
8 there may be some questions about the adequacy of trial  
9 counsel's investigation. And now I need, you know, we need  
10 money to begin to look at that.

11 That would be a specific articulation of a potential  
12 failing in trial counsel's performance, correct?

13 A. So now do I answer? I'm not trying to give you a hard  
14 time, I'm just trying to figure out --

15 THE COURT: I think he wants an answer.

16 THE WITNESS: Okay. If -- if the question simply is,  
17 could I have put more in the motion? Well, of course I could  
18 have put more in the motion. I told you that in the  
19 deposition. I think our dispute is is what would it have  
20 meant? I guess that's speculation at this point.

21 BY MR. SANDMAN:

22 Q. Okay. I agree with that. Now --

23 THE COURT: Okay. So we can stop the commenting.

24 MR. SANDMAN: I'm sorry.

25 THE COURT: Look, I think what he's trying to say is

1 this --

2 THE WITNESS: Is this a question? I'm sorry, Your  
3 Honor. I'm not trying to be disrespectful.

4 THE COURT: No, I'm trying to follow up on his  
5 question. I'm trying to understand. I think he's saying if  
6 you had pointed out to the court that you think there were  
7 problems with the timeline theory that the prosecution  
8 presented at the trial, do you think that would have helped  
9 convince the judge to give you the resources you needed to  
10 pursue the investigation you wanted to pursue.

11 THE WITNESS: I'm trying to understand the question.  
12 And I'm not trying --

13 THE COURT: So let me break it down a little more. So  
14 what he's trying to say is that the prosecution pursued a  
15 theory at the trial that relied upon a particular timeline of  
16 when events happened. If you could have pointed out to the  
17 judge in your request that there were serious flaws with that  
18 timeline, would that have helped, do you think, convince the  
19 court to give you the resources? I think that's what you're  
20 trying to ask.

21 THE WITNESS: I don't think he's asking that. I'm not  
22 trying to interfere with that.

23 THE COURT: Okay. Well, I'm asking it.

24 THE WITNESS: No, I don't. That's my belief, sincere.  
25 I don't. I do agree that I could have put more in but I don't

1 think that's the case. That's just the culture that we were  
2 working. Obviously I didn't get it and obviously it was  
3 needed. I'm not disagreeing with that. I'm not making an  
4 assertion here today that I had the ability to do this  
5 investigation on my own because I wouldn't have asked if I  
6 thought that was the case.

7 THE COURT: Is it your belief that it doesn't matter  
8 what you would have said in your pleadings, you would not have  
9 been -- your request would not have been approved?

10 THE WITNESS: That's what I believe, yes.

11 THE COURT: And you believe that's because it was the  
12 culture of the court at that time to deny those requests in  
13 spite of what you -- how you would have framed it?

14 THE WITNESS: Right. And this is shown by the fact  
15 that the Attorney General didn't even oppose this request for  
16 the expert.

17 THE COURT: Go ahead, Mr. Sandman.

18 BY MR. SANDMAN:

19 Q. In other words, we're sort of going round and round on this  
20 but you do agree that in order to get funding -- and let me  
21 back up and ask it this way: In order to appeal a denial of  
22 funding under ARS 4013, you have to make a colorable showing  
23 that you're entitled to indigent defense funding under that  
24 statute, correct?

25 A. I don't disagree. I think we disagree on what's a

1 colorable showing. I think that's what we disagree on.

2 Q. And certainly it wouldn't be your objective to withhold  
3 important information from the trial court that -- that's  
4 probably the most crucial, could be the most crucial evidence  
5 showing the need for investigation, correct?

6 A. You're talking about the trial court then, not today,  
7 you're not asking me if I'm trying to withhold something?

8 Q. Would you, out of your belief you couldn't get funding,  
9 would you withhold information central to your need for  
10 investigation from the trial court?

11 THE COURT: I'm not sure I even understand that  
12 question.

13 MR. SANDMAN: All right. I'll move on.

14 THE COURT: You can answer it if you understand the  
15 question, sir.

16 THE WITNESS: I think he's asking me if there would be  
17 cases where I would withhold information that could be in a  
18 motion that would make it be granted and honestly the answer to  
19 that question would be on the particular case and the  
20 particular facts. If there were witnesses that we wanted to  
21 investigate that the prosecutor hadn't got ahold of or at that  
22 point, that could be the case. But my -- the 30 years of being  
23 a lawyer, I've always been honest and frank with the court.  
24 I'm not going to try to file something untruthful or try to  
25 play a game with the court. I wanted to have the expert.

1 Let's just be clear on that. I wanted the expert and I had  
2 done a number of these cases and not in Pima County but in  
3 Maricopa County and I wanted that expert on whatever, whether  
4 it was a trial investigation from the beginning or whether it  
5 was a post-conviction proceeding, I wanted that.

6 BY MR. SANDMAN:

7 Q. This was your only post-conviction case in Pima County,  
8 correct?

9 A. Yes, yes, you've asked me that before, yes.

10 Q. And so you don't know anything or didn't know anything  
11 about the culture in Pima County and whether those judges would  
12 actually comply with the statutory requirements of funding?

13 A. I don't think that's correct at all. I don't agree with  
14 your assertion at all. I attended seminars, I talked to  
15 lawyers from all over the state. This was a common subject of  
16 conversation at meetings, trainings.

17 In fact, at some of these we were trained to -- I remember  
18 one of the trainings I went to, we were trained to be complete  
19 idiots, and that way they can -- when it got to this stage,  
20 something good would happen to them. And I remember a lawyer  
21 from the capital representation project telling me that. Why  
22 don't you just go to court and do nothing, say nothing, and be  
23 completely ridiculous and that way this person will have an out  
24 later on? And I said: I've taken an oath to be a lawyer.  
25 I've worked hard to be -- for the client. I'm not going to do

1 that.

2 So I don't agree with your assertion that I wasn't aware of  
3 what was going on and my focus was very narrow. I don't agree  
4 with that question and that answer.

5 Q. Not based on your own knowledge but what some people that  
6 you haven't identified in documentation, you haven't -- you're  
7 not prepared to give us, correct?

8 A. Well, I don't have the speakers from the late 1990s capital  
9 representation trainings that were held in Phoenix. I was  
10 there and we all talked and, you know.

11 Q. Take a look at Exhibit 27 if you could. And if you could  
12 blow up lines 11 through 23.

13 Now, this was a motion filed by one of the trial counsel  
14 during -- just before Mr. Jones' trial in April '95. It's  
15 actually dated March 29.

16 A. If that's what you say it is, yes.

17 Q. Have you reviewed this document during --

18 A. I think you showed me that during the deposition, if I'm  
19 not mistaken; I've seen it before.

20 Q. Okay. And in this motion part of the trial file, there's a  
21 request for a transcripts of John Howard who testified at the  
22 trial of Arizona versus Angela Gray, correct?

23 A. That's what it says there, yes. I was trying to find where  
24 you were on the line, yes.

25 Q. Okay. And they also requested a transcript from Becky Lux,

1 Rachel's sister, who testified at the Gray trial on March 24,  
2 '95, correct?

3 A. Her name is mentioned there, yes, sir.

4 Q. And the motion says that these testimonies form a crucial  
5 part of defendant's case.

6 Do you see that?

7 A. Line 16, yes, sir.

8 Q. All right. And then if we skip ahead a couple of pages to  
9 the final -- the third page of the exhibit, and there you see  
10 that Judge Carruth entered an order to have those transcripts  
11 prepared, correct?

12 A. Yes.

13 Q. And during your deposition, you indicated, based on billing  
14 entries that you made, that you had actually reviewed those  
15 transcripts for Dr. Howard and Becky Lux when they testified at  
16 the Gray trial, correct?

17 A. Yes. If I testified to that, it was on my bill, I let the  
18 bill speak for itself, sure.

19 Q. And do you recall from your recent review of the record  
20 that Dr. Howard testified at the Gray -- well, let me strike  
21 that.

22 So at least at the time that you represented Mr. Jones,  
23 since you billed for review of the transcripts, you had  
24 knowledge of what Dr. Howard and Ms. Lux testified to at the  
25 Gray trial, correct?



1 A. At the time that I reviewed it, I had that knowledge, yes.

2 Q. Okay.

3 A. If you're asking if I have an independent recollection  
4 today, the answer is no.

5 Q. Okay. And do you recall from your recent review of the  
6 records that, at Ms. Gray's trial, Dr. Howard testified that  
7 the small bowel injury suffered by Rachel was most consistent  
8 with infliction 24 hours prior to death, during a time which  
9 would have been prior to afternoon of May 1st?

10 A. Yes, you showed me that at the deposition.

11 Q. Okay. And did you also understand, based on your  
12 reexamination of the record, that Mr. Jones' jury never learned  
13 that the fatal injury was most consistent with occurrence on a  
14 day prior to May 1?

15 A. Yes, you showed me that at the deposition.

16 Q. And do you agree that when -- at the time that you reviewed  
17 the record in this case, including Mr. Jones' trial transcripts  
18 and these couple from Ms. Gray's trial, that that would have  
19 raised additional questions whether trial counsel had  
20 adequately investigated the central time of injuries issue?

21 A. Yes, and I believe I answered yes at the deposition, too.

22 Q. Okay. And did you -- with that -- armed with that  
23 additional information, did you include anything in your  
24 funding request or could you have supplemented your request  
25 with evidence that demonstrated a need to investigate the

1 medical timeline from injury to death based on the inconsistent  
2 testimonies of Dr. Howard at these two trials?

3 A. I've already indicated that I could have put more in, if  
4 that's what you're asking me. I said that repeatedly.

5 Q. So just to summarize, what you could have presented in your  
6 motion for funding -- and, by the way, Mr. Hazel, you agree  
7 that no matter what you thought would happen, you had a legal  
8 duty to comply with the funding -- indigent funding statute?  
9 Now, you may think you did comply but you would agree you had a  
10 duty to comply, correct?

11 A. Yes, and --

12 Q. Okay. So I think where we are at this point is that you  
13 could have told Judge Quigley that the testimony as to the  
14 central issue of the timeline went uncontested in Mr. Jones'  
15 trial, defense presented no evidence or cross-examination, and  
16 then at a trial two weeks earlier, the forensic pathologist  
17 actually placed the time of injury on the day prior to May 1st,  
18 correct? All that could have been presented to Judge Quigley,  
19 could it not?

20 A. I think I've answered that yes many times, yes.

21 Q. And now, with all that information, you're building a case  
22 for the need for an appointment of a forensic pathologist to  
23 assist Mr. Jones and yourself in this post-conviction case,  
24 correct?

25 A. I'm sorry. I don't understand that question. If you're

1 asking me if there could have been more in the motion, yes, I  
2 can't disagree with you. I look at this motion here that you  
3 brought up, and we had this discussion at the deposition, he  
4 simply says he needs it, that judge decided to give it to him.  
5 You know --

6 Q. Okay. But Judge Quigley was not the trial judge in  
7 Mr. Jones' case, was he?

8 A. No, he wasn't.

9 Q. And so he wouldn't have known anything about Dr. Howard's  
10 testimony in the Gray case where he put the likelihood that the  
11 injury occurred the day prior to May 1st as the most probable,  
12 correct?

13 A. That would be an assumption of what Judge Quigley and Judge  
14 Carruth had talked about. I can't answer that.

15 Q. Okay. Now, when you received this information that  
16 Dr. Howard testifies at Mr. Jones' trial that the injuries  
17 occurred on Sunday afternoon, May 1, and then you have this  
18 testimony from the Gray trial where he puts the most likely  
19 timing of the injury on the day prior to that, would it have  
20 been reasonable to attempt to interview Dr. Howard to try to  
21 understand his views on this and whether perhaps that could  
22 advance your understanding of a possible claim of ineffective  
23 assistance?

24 A. Yes, and I think it all starts with the investigator.

25 Q. Well, now, this is a capital case you're working on, right?

1 Mr. Jones is facing execution, correct?

2 A. Yes, I don't dispute that.

3 Q. You don't have an investigator, correct?

4 A. Right. I don't disagree with you.

5 Q. Okay. And my question was: Would you have needed an  
6 investigator to attempt to interview Dr. Howard given the  
7 striking inconsistencies in his testimonies at the two trials?

8 A. Would I have absolutely needed it, no.

9 Q. Okay. Could you think of any kind of strategy that you  
10 were trying to further in this case that would contravene a  
11 desire to talk to Dr. Howard?

12 A. As I told you, I don't have independent recollection of  
13 everything that happened in this case so I couldn't answer  
14 that.

15 Q. Now, let's take a look at Exhibit 45. This is --  
16 Exhibit 45 is in evidence as a declaration that John Howard  
17 executed on 15 December, 2004. Have you seen this before?

18 A. You showed it to me at the deposition and I think you  
19 showed it to me when you came to meet me in my office.

20 Q. If you could blow up paragraph 3. So if you had pursued a  
21 conversation with Dr. Howard -- let me strike that.

22 In paragraph 3 he says that if trial counsel had asked him  
23 whether the injury to Rachel Gray's abdomen had caused her  
24 death could have happened more than 24 hours before her death,  
25 "I would have answered the question in the affirmative."

1 Do you see that?

2 A. Yes, I see that he said that five years after the fact.

3 Q. And if we could take a look at page 2, paragraph 7, you see  
4 there that he reports that there were actually physical  
5 findings available from the autopsy done by Mr. Howard that are  
6 consistent with an injury that could have been present greater  
7 than 24 to 48 hours?

8 Do you see that?

9 A. It says that there, yes, sir.

10 Q. Okay. And page 3, paragraph 11. And you see there that he  
11 has considered the possibility that the injury to Rachel  
12 actually could be four to six days old prior to her death,  
13 correct?

14 A. It says that there, yes, sir.

15 Q. And then down in paragraph 13, he reports that the injuries  
16 to Rachel Gray's vaginal area showed characteristics consistent  
17 with hours to perhaps days elapsing between the time of her  
18 abdominal injury and her vaginal injury.

19 You see that also, I suppose?

20 A. Yes, I see that there.

21 Q. Okay. Now, if you had called Dr. Howard to try to ferret  
22 out some of the differences between the two testimonies you had  
23 in your file and had obtained information which seems he was  
24 readily willing to give if only trial counsel had asked him  
25 about it, you could have presented this additional information

1 in a motion for funding, further supporting your need for the  
2 assistance, let's say, for a forensic pathologist, correct?

3 A. I've already said that I could have put more in the motion.

4 Q. All right. And just to be clear what we're talking about  
5 here, in the two funding requests that you made, you never  
6 asked for help from a forensic pathologist, correct?

7 A. No, I start -- my process was to start with a regular  
8 investigator, that's correct.

9 Q. And certainly even without talking to Dr. Howard, based on  
10 the information you had just looking at the testimony from the  
11 Gray trial and the Jones trial, you certainly had grounds to  
12 present to Judge Quigley the need for a forensic pathologist  
13 but you never asked for that, correct?

14 MS. GARD: Judge, I object. I think we've answered  
15 these questions multiple times.

16 MR. SANDMAN: I'll withdraw the question.

17 BY MR. SANDMAN:

18 Q. Now, I want to go back to Exhibit 27 for a moment. Do you  
19 agree with Ms. Bowman's assessment in Exhibit 27 that  
20 Dr. Howard's testimony at the Angela Gray trial was crucial to  
21 Mr. Jones in his case?

22 A. You're asking me if what the testimony in that case was was  
23 important? Yes, I do.

24 Q. Well -- okay. And that's because Dr. Howard put the likely  
25 time of the injury on the day -- on April 30th, correct?

1 A. I'm not going to summarize the evidence but you asked me if  
2 I thought it was important.

3 Q. Okay.

4 A. I'm not prepared to go over the evidence of the case again  
5 unless you have a specific transcript and page you want me to  
6 look at.

7 Q. Now, the -- this motion also indicates that the testimony  
8 of Becky Lux was also crucial to Mr. Jones' case, correct, to  
9 his defense?

10 A. It says that there, yes, sir.

11 Q. And do you recall from your recent review of the record  
12 that at the Angela Gray trial, which you said you reviewed that  
13 transcript, Becky's testimony there, do you recall that Becky's  
14 testimony at the Gray trial was that Rachel took two trips in  
15 the van on Sunday afternoon with Mr. Jones and did not appear  
16 harmed at all?

17 A. You pointed that out at the deposition on a previous  
18 occasion.

19 Q. Okay. And do you recall from your recent reexamination of  
20 the record that during Mr. Jones' trial, she testified there  
21 were actually three trips and she didn't see Rachel after the  
22 third trip, correct?

23 A. You pointed that out to me at the deposition and a previous  
24 meeting, yes, sir.

25 Q. Now, during your deposition, you testified that you could

1 have used the inconsistencies between Becky's testimonies at  
2 the two trials as a basis to investigate a claim of ineffective  
3 assistance and to bolster your request for funding in  
4 Mr. Jones' case, correct?

5 A. What page was that on?

6 Q. Well, let's take a look at Exhibit 123, starting at  
7 page 65.

8 A. I'm not saying you're incorrect but if you're asking me to  
9 recall something specifically I said at the deposition, I would  
10 want to know the page.

11 Q. So we're going to start at page 65, line 24, and the  
12 question was: Could you have used the inconsistencies between  
13 Becky's testimonies at the Gray trial and the Jones trial as a  
14 basis to investigate a claim -- a possible claim of ineffective  
15 assistance of trial counsel?

16 And what was your answer?

17 A. Like it is today, I think I've already answered that  
18 question in the affirmative.

19 Q. And is there any record in this case that you did that?

20 A. I'm going to allow the records to speak for themselves.

21 Q. And I'm just going to read the question at page 66 which  
22 captures the next question about whether you could have used  
23 this for a funding request.

24 A. What line is that? I'm sorry.

25 Q. I'm sorry. Page 66, line 8. Could you have, in your



1 December 31, 1999, motion for investigative assistance, could  
2 you have provided the trial judge, Judge Quigley, with  
3 information about these inconsistencies in Becky's testimony to  
4 bolster your request for expert assistance?

5 And what was your answer to that question?

6 A. You want me to read it?

7 Q. Yes. At lines 13, 14.

8 THE COURT: You're going to have to expand that.

9 THE WITNESS: I can see it. I'm sorry. I think I  
10 have already asked me that -- I think you have already asked me  
11 that but, yes, I answered yes in the prior question.

12 BY MR. SANDMAN:

13 Q. All right. And so you had quite a bit of evidence that  
14 gave rise to a suspicion that the trial counsel had  
15 investigated inadequately, that there were serious  
16 inconsistencies in testimony between the Gray trial and the  
17 Jones trial that impacted directly on the timeline of injury to  
18 death, and you never presented that in support of any of your  
19 funding requests; is that right?

20 A. I would answer the same way I did back then. I think I've  
21 already answered that. I'm not trying to be difficult with you  
22 but I think I've already answered that. You have maintained  
23 that I should have put more in the motion and I can't argue  
24 with you on that. The motion speaks for itself after this many  
25 -- this long.

1 Q. Now, you were already out of the case but when this case  
2 went to the Arizona Supreme Court on the record that you made  
3 as Mr. Jones' counsel, the Arizona Supreme Court actually  
4 considered whether your funding requests were adequate and met  
5 the statutory requirements.

6 Were you aware of that?

7 A. I think you may have discussed that with me. If you have  
8 an exhibit you'd like me to look at, I'll look at it.

9 Q. Are you aware that the Arizona Supreme Court held that your  
10 funding requests failed to meet the statutory requirements?

11 A. I think you may have discussed that with me.

12 Q. And the record in this case which, of course, contains the  
13 Arizona Supreme Court decision following your Rule 32 petition,  
14 the record will reflect what they said about that, correct,  
15 Mr. Hazel?

16 A. I don't have it in front of me but I have no reason to  
17 disbelieve that the records of the Arizona Supreme Court  
18 wouldn't be accurate.

19 Q. Now, during your deposition, I asked you about some of the  
20 bloodstain interpretation evidence that was presented at  
21 Mr. Jones' trial. Do you remember that?

22 A. Yes, you asked me about that.

23 Q. And you agreed that the trial record showed that counsel  
24 made no direct challenge to the state's bloodstain  
25 interpretation evidence, correct?

1 A. I recall that, but I don't know what page it is on the  
2 deposition. If you want me to look at a specific page, I'll be  
3 glad to do so.

4 Q. It's Exhibit 123 at 67, page 67, lines 5 through 9.

5 A. Okay. I'm on page 67 now.

6 Q. And my question was, quoting from -- beginning at line 5 of  
7 that page: And during the review in preparation for this  
8 deposition, did you -- were you able to confirm that Mr. Bruner  
9 did not make any challenge to the bloodstain interpretation  
10 evidence?

11 And your answer was?

12 A. That's my recollection. That's what the deposition says.

13 Q. Now, knowing that -- now you have on top of the evidence  
14 that you had raising questions about whether trial counsel had  
15 adequately investigated the medical timelines, you also had  
16 evidence raising questions about the adequacy of defense  
17 counsel's interpretation of the blood -- or his work on the  
18 bloodstain evidence, correct?

19 A. Are you asking me that -- I'm not trying to be difficult.  
20 Are you asking me that same question again? I mean, I said  
21 that was my recollection, so obviously I can't give an  
22 inconsistent answer again.

23 Q. Did you provide any evidence to the trial court in your  
24 funding request that indicated that there was bloodstain  
25 evidence presented that went unchallenged and that you needed

1 to find out whether there was any kind of defense to that  
2 bloodstain evidence? Did you ever inform Judge Quigley of  
3 that?

4 A. As I previously said, the motion spoke for itself. I'm not  
5 going to try to say that I said something to Judge Quigley  
6 that's not in the record. I can't; I don't have a recollection  
7 of any of that.

8 Q. At your deposition I asked you a question posed somewhat as  
9 follows and that is: If you had --

10 A. What page is that on? I'm sorry. So I can follow along.

11 Q. The question -- do you remember that I asked you at your  
12 deposition that if you had been able to uncover evidence as  
13 part of an investigation that would have been authorized by the  
14 trial court that Rachel's injuries did not occur on May 1st and  
15 if you had investigated the bloodstain interpretation evidence  
16 and found that that evidence could be associated with  
17 Mr. Jones' innocence, would you have gone further to try and  
18 obtain funding in furtherance of a challenge to the eyewitness  
19 testimony in Mr. Jones' case?

20 A. I believe I said yes at the deposition.

21 Q. Okay. So as you -- if you had begun to build a case  
22 incrementally to gather evidence that the medical timeline was  
23 wrong, that the bloodstain evidence could be interpreted to  
24 demonstrate innocence, you wouldn't have stopped there, you  
25 would have looked at the next piece of evidence, that

1 eyewitness testimony, and concentrated on how you could  
2 challenge that; is that right?

3 A. Well, I always try to do my best. I would say yes. I  
4 mean --

5 MR. SANDMAN: I have no further questions.

6 THE COURT: All right. Thank you.

7 Cross-examination?

8 MS. SMITH: We have no cross, Your Honor.

9 THE COURT: All right. Thank you very much, sir.

10 THE WITNESS: Am I excused, Your Honor?

11 THE COURT: You are.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Thank you.

14 Your next witness?

15 MR. SANDMAN: Your Honor, can I have just maybe a  
16 couple of minutes? I think Mr. Cooper's here but just to run  
17 to the rest room.

18 THE COURT: Yes. And we're going to have to break by  
19 about 20 minutes to 12:00. Do you want to just resume at  
20 1:00 o'clock?

21 MR. SANDMAN: I would appreciate that, Judge.

22 THE COURT: And is Mr. Cooper the last witness of the  
23 day?

24 MR. SANDMAN: Yes.

25 THE COURT: And do you believe we can finish with

1 Mr. Cooper before the end of the day?

2 MR. SANDMAN: Easily.

3 THE COURT: Okay. Then we'll just resume at  
4 1:00 o'clock.

5 MR. SANDMAN: Thank you, Judge.

6 THE COURT: Thank you.

7 (Whereupon, the matter was adjourned at 11:25 a.m.)  
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## C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

/s Cindy J. Shearman  
CINDY J. SHEARMAN, RDR, CRR, CRC

November 17, 2017  
DATE